CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 ~~9~~

No. 590 ~~9~~ 17

KARL HERBRING, APPELLANT,

vs.

CLAIRE A. LEE, AS INSURANCE COMMISSIONER OF THE STATE OF OREGON

APPEAL FROM THE SUPREME COURT OF THE STATE OF OREGON

FILED DECEMBER 17, 1928

(33,899)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 19, 1929

[fols. 1-5]

IN CIRCUIT COURT OF MARION COUNTY

#19185

CARL HERBRING

vs.

CLARE A. LEE, as Insurance Commissioner of the State of Oregon

JUDGMENT—Jan. 23, 1928

This matter coming on regularly to be heard on this 27th day of December, 1927, plaintiff appearing by Kelly and MacMahon, Mr. MacMahon present, his attorneys, and defendant appearing by I. H. Van Winkle, Attorney General, and Willis S. Moore, Assistant Attorney General, Mr. Moore present; the court having read the stipulation of facts submitted by the parties and heard the argument of counsel for and on behalf of plaintiff and defendant, respectively, and it appearing to the court that on or about the 13th day of October, 1927, the Northwestern National Fire Insurance Company made application to the defendant, as Insurance Commissioner of the State of Oregon, for the appointment of Carl Herbring, a resident of the city of Portland, Oregon, to act as an additional insurance agent for said company in said city of Portland, and it further appearing to the court that said application was refused by the defendant for the reason that the said Northwestern National Fire Insurance Company refused to pay an additional annual license fee of $500 required by said section 6388. Oregon Laws, to be paid by any insurance company appointing an additional agent as provided by subdivision 8, of said section 6388, Oregon Laws; and, it further ap-
[fol. 6] pearing and the court finds that said provision requiring the payment of an annual license fee of $500 is void and unconstitutional and an unlawful interference with the right of said agent to engage in the business of selling fire insurance in the State of Oregon and with the right of

said insurance company to appoint such agent, except upon the payment of said additional license fee of $500.

It is hereby ordered that the said defendant be and he is hereby required to issue to said plaintiff a license to act as agent for the Northwestern National Fire Insurance Company in the sale of fire insurance in the city of Portland, Oregon, without said Northwestern National Fire Insurance Company being required to pay to the State of Oregon the sum of $500 as an annual license fee for the appointment of such agent, and that plaintiff do have and recover of and from the defendant his costs and disbursements herein taxed at $—.

The defendant having duly given notice in open court that he appeals from the above order to the Supreme Court of the State of Oregon,

It is further ordered that said notice of appeal be entered in the journal of this court.

[fol. 7] IN CIRCUIT COURT OF MARION COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed Feb. 24, 1928

To Karl Herbring, plaintiff above named, and to Kelly and MacMahon, his attorneys:

Please take notice that the above named defendant appeals to the Supreme Court of the State of Oregon from the order made and entered in the above entitled cause by the above named court on the 24th day of February, 1928, in favor of the plaintiff and against the defendant, and from the whole thereof.

I. H. Van Winkle, Attorney General; Willis S. Moore, Assistant Attorney General, Attorneys for Defendant and Appellant.

[fol. 8] STATE OF OREGON,
County of Marion, ss:

I, Willis S. Moore, being first duly sworn, depose and say that on the 24th day of February, 1928, I served the

within Notice of Appeal upon Kelly and MacMahon who are the Attorneys for Plaintiff, by then depositing in the United States postoffice at Salem, Oregon, a full, true and correct copy thereof addressed to the said Kelly and MacMahon, at 420 Puget Sound Bank Bldg., Tacoma, Washington, and prepaying the postage thereon.

Willis S. Moore, of Attorneys for Defendant and Appellant.

Subscribed and sworn to before me this 24th day of February, 1928. J. B. Hosford, Notary Public of Oregon. My commission expires 6/9/28. (Seal.)

[File endorsement omitted.]

[fol. 9] Clerk's certificate to foregoing papers omitted in printing.

[fol. 10] In Circuit Court of Marion County

[Title omitted]

Stipulation as to Facts—Filed Dec. 13, 1927

It is hereby stipulated by and between the parties hereto that the following facts may be considered by the Court as admitted upon the trial of the above entitled action, to-wit:

1. That plaintiff is a duly and regularly licensed practicing attorney with offices in the Porter Building, Portland, Oregon; that for the past fifteen years or more, the plaintiff has followed such vocation and is now in good standing as such attorney and entitled to practice such profession in the courts of the State of Oregon.

2. That the defendant is the duly and regularly appointed, qualified and acting Insurance Commissioner of the State of Oregon.

3. That on or about the 13th day of October, 1927, the plaintiff duly filled out upon the form prescribed and furnished by the defendant as Insurance Commissioner, his agent's report and application for a license to issue to him to represent the Northwestern National Insurance Com-

pany in the city of Portland, State of Oregon, which application was in words and figures following:

[fol. 11] "Department of Insurance, State of Oregon

Fire, Fire (Automobile), Marine, of Fire and Marine Insurance

Agent's Qualification Report to the Insurance Department, State of Oregon

I hereby make application for an agent's license to transact — insurance business in the State of Oregon in compliance with requirements of the law regulating such business.

I warrant the answers to inquiries in this statement to be full, true and complete, and I understand the law makes them have the same force and effect as if such statement were made under oath.

Date: Oct. 13, 1927.

1. Name of applicant: Karl Herbring. (If firm, name members of firm; if corporation, name officers.)

2. Business address: (Street and number:) 1202 Porter Bldg., Portland, Ore.; Residence: 801 Mason St. (Town or City:) Portland, Ore.

3. Occupation last twelve months: Attorney.

4. Insurance companies of any kind represented last twelve months? (Fire, Marine, Life, Miscellaneous:) None.

5. Where represented? ——.

6. Has your license ever been refused, suspended or revoked by the insurance department of this or any other state? If so, give particulars. No.

7. Are you now or have you been the plaintiff or defendant in any suit involving an insurance company? If so, give particulars. No.

8. (a) Company you now desire license to represent: Northwestern National Insurance Company of Milwaukee, Wisconsin; (b) What business will you transact for this company? (Fire, Automobile, Marin-:) Fire Insurance.

9. Do you hold this agency for the purpose of insuring property of yourself, your firm or corporation, or of your

employer? No. If so, how much other insurance do you expect to write? ——.

10. Give names connected with your agency, including salaried employes, authorized to solicit insurance. None.

11. Are you sufficiently conversant with the insurance laws of Oregon to properly protect both parties to an insurance contract? Yes.

12. I hereby agree not to discriminate or mispresent in any matters of insurance; neither will I, directly or indirectly, rebate nor split commissions with any agent not licensed in this state.

(Signature of person or firm desiring license:) Karl Herbring.

[fol. 12] This application is approved and we request that license be granted.

(Company:) Northwestern Nat'l Ins. Co., by (Desig-title of person signing for company:) L. S. Frudenfeld, Special Agent, Porter Bldg., Portland Oregon."

Date: Oct. 13, 1927.

4. That the Northwestern National Insurance Company of Milwaukee, Wisconsin, is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and has for many years last past and is now duly qualified to write policies of fire insurance in the State of Oregon and covering property in said state.

5. That on or about the 18th day of October, 1927, the defendant returned the said application of plaintiff to the Northwestern National Insurance Company of San Francisco, California, and enclosed therewith a letter of which the following is a copy:

"October 18, 1927.

Mr. D. W. Clark, Manager, Northwestern National Insurance Co., 310 Sansome Street, San Francisco, California.

Dear Mr. Clark: We are in receipt of a letter from Mr. Karl Herbring, Portland, in which he enclosed his check for $2.00 and agent's qualification report filled out by himself.

As this department can not accept applications direct from an applicant, we are attaching, hereto, application blank which we ask that you please complete and return to this department at your early convenience, and oblige.

Yours very truly, Clare A. Lee, Insurance Commissioner, by —— ——, Deputy.

CMcN/R.

Encls. 1."

[fol. 13] 6. That the application blank referred to in said letter of October 18, 1927, is in the following form, to-wit:

"Fire, Marine, Fire and Marine, Fire (Automobile), Marine (Inland)

Fire and Fire and Marine—Application

To the Insurance Commissioner of the State of Oregon, Salem, Oregon:

The —— —— certifies that it has, in compliance with the provisions of the Laws of Oregon, established agencies at the places named in the following schedule and duly appointed the persons, firms and corporations named in said schedule, who reside and do business at such places, agents for the transaction thereat of the business of — insurance so far as they may be legally empowered by their letters of appointment, powers of attorney and the instructions which may be given them by it. Request is therefor- made that a license be issued to each such agent authorizing them to act for such company during the year ending April first following the date of this appointment.

Signed at —— this — day of ——, A. D. 192-.

—— ——, Secretary, Manager, General or Special Agent.

Certificates $2.00 each, whether for individual, firm or corporation.

This appointment must be signed either by officers of the Company, or by the manager or agent having authority on record with the Commissioner.

The name of each and every individual member comprising a firm, and the names of the principal officers (president and secretary) of a corporation, must be given.

Certificate number	Name of agent (individual, firm or corporation)	Individual names of members of firm and principal officers of corporation	County	Place of residence
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

7. That under date of October 20, 1927, the Northwestern National Insurance Company addressed to the defendant a letter of which the following is a copy:

"October 20, 1927.

Hon. Clare A. Lee, Insurance Commissioner, Salem, Oregon.

DEAR SIR: In compliance with your letter of October 18th we return herewith, properly signed, the application of Karl [fol. 14] Herbring to represent us as agent in Portland.

Thanking you most kindly for the issuance of the license, we are

Yours very truly, D. W. Clark, Manager Pacific Coast Department."

DWC/T.
Enc.

8. That on or about the 22nd day of October, 1927, the defendant addressed and mailed to the Northwestern National Insurance Company a letter of which the following is a copy:

"October 22, 1927.

Mr. D. W. Clark, Northwestern National Insurance Co., 310 Sansome Street, San Francisco, California.

DEAR MR. CLARK: We are returning, attached, your application for Mr. Karl Herbring, Portland, Oregon, together with his qualification report. Check No. 4806 sent us in payment of the fee is being returned to Mr. Herbring as it was received from his office:

As your Portland quota is filled by the agencies of John B. Coffey & Company, and the Pallett, Strum, Reed Company, your request for license cannot be granted unless you wish to pay the additional fee of $500.00, as the Oregon Law provides:

"Any such insurance company which is authorized to transact fire insurance in this state in its corporate title

and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.'

In this connection please refer to Section 22c (6338), paragraphs 4, 6, 7, and 8, pages 40-42, Oregon Insurance Laws, 1925.

Very truly yours, Clare A. Lee, Insurance Commissioner, by —— ——, Deputy."

CMcN/R.
Encls.

[fols. 15 & 16] 9. That on or about the 22nd day of October, 1927, the defendant addressed and mailed to the plaintiff a letter of which the following is a copy:

"October 22, 1927.

Mr. Karl Herbring, Attorney at Law, 1202 Porter Building, Portland, Oregon.

DEAR MR. HERBRING: We are attaching, hereto, check No. 4802 for $2.00 written in favor of the Insurance Commissioner of Oregon in payment of fee for license in your favor to represent the Northwestern National Insurance Company. We have today returned your application and qualification report to the San Francisco Office, inasmuch as you would make a third agency for the Northwestern National Insurance Company in Portland, and this is not permissible under the Oregon Insurance Laws, unless the additional fee of $500.00 is paid for such license.

Yours very truly, Clare A. Lee, Insurance Commissioner, by —— ——, Deputy."

CMcN/r.
Encls. 1.

And it is further stipulated that this stipulation shall take the place of and shall be considered by the court upon the hearing hereof as the return of the defendant Commissioner made in conformity with the statute respecting the same.

Dated at Salem, Oregon, this 12th day of December, 1927.

Karl Herbring, In Pro. Per. Kelly — MacMahon, of Attorneys for Plaintiff. I. H. Van Winkle, Attorney-General for Oregon, Attorney for Defendant. Willis S. Moore, Assistant.

[File endorsement omitted.]

[fols. 17 & 18] Bond on appeal for $500, approved and filed October 31, 1927, omitted in printing.

[fol. 19] In Circuit Court of Marion County

[Title omitted]

Notice of Appeal—Filed Oct. 31, 1927

To Clare A. Lee, Insurance Commissioner of the State of Oregon:

You are hereby notified that I, Karl Herbring, plaintiff above named, do hereby appeal to the Circuit Court of the State of Oregon for Marion County from that certain order made and entered by you on October 22, 1927, wherein and whereby you refused and declined to issue a commission and license to the undersigned to act as an agent and write fire insurance policies for the Northwestern National Insurance Company of the City of Portland, Oregon, for the reason that said company already had two such agents in said City of Portland and an additional fee of $500.00 was not paid or tendered with the application the undersigned made for such license; and I hereby appeal from the whole of said order.

Dated October 31, 1927.

Karl Herbring, In Pro. Per. Kelly & MacMahon, Herbring & Smith, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 20] IN SUPREME COURT OF OREGON, DEPARTMENT No. 2

KARL HERBRING, Respondent,

v.

CLARE A. LEE, as Insurance Commissioner of the State of Oregon, Appellant

OPINION—Filed July 17, 1928

BEAN, J.:

Reversed.

[File endorsement omitted.]

[fol. 21] The defendant appeals from the judgment of the circuit court requiring him to issue to plaintiff, Carl Herbring, a license to act as agent for the Northwest National Fire Insurance Company in the sale of fire insurance in the city of Portland, Oregon, without said fire insurance company being required to pay to the state of Oregon the sum of $500 as an annual license fee for the appointment of an additional agent.

BEAN, J.:

Section 6333 Or. L. provides that, except in certain instances therein specified, which are not material to the question herein presented, as follows:

"No company, association, person or persons, authorized to transact insurance or offer indemnity contracts in this state, other than life insurance companies, and not incorporated under the laws of this state, hereinafter designated as company, shall make, write, place or cause to be made, written, or placed, any policy or contract of insurance or indemnity of any kind or character, or a general or floating policy covering risks on property located in the state of Oregon, liability created by or accruing under the laws of such state, or undertakings to be performed in such state, except through their regularly commissioned and licensed resident agents, who shall countersign all policies or indemnity contracts so issued and collect the premiums therefor, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state, and no person shall pay or forward any premiums or applications

for insurance or in any manner secure, help or aid in the placing of any insurance, or effect any contract of insurance or indemnity upon property, liability or undertakings located in this state with any such insurer which is not authorized to transact its business in this state; provided:

* * * * * * *

(3) "Every company duly authorized and licensed to transact insurance business, other than life insurance companies, in the state of Oregon, and lawfully doing such business therein, may in respect thereof appoint an agent or agents in each city, town or village in this state, and the name of every agent appointed in accordance with the provisions of this section, including the classes of business he is authorized to transact for such company, shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner, if he finds the agent qualified, shall thereupon issue to each such agent a license setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending April 1st, following the date of such appointment; provided, that the license issued to an established agency of any company in any city, town or village in this state may be transferred by the insurance commissioner to another agent or agency upon proper application of any such company, without exacting further fees. Every such license for each such agent representing any such company shall be renewed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such license shall be $2 and shall be paid to the insurance commissioner."

[fol. 22] Plaintiff, a resident and practicing attorney in the city of Portland, Oregon, made application to the defendant as insurance commissioner for a license to act as agent in that city for the Northwest National Fire Insurance Company, a foreign insurance corporation, which for several years had been qualified and doing insurance business in the state of Oregon. The application of the plaintiff was denied by the insurance commissioner for the reason that the Northwest National Fire Insurance Company

is a foreign fire insurance corporation, and that it had already appointed two resident agents to act for it in the city of Portland under its corporate name, and that a third agent for said city to act under its corporate name could not be appointed except upon the payment of an additional fee of $500 by said insurance company. The refusal was based upon Section 6388 Or. L., which relates to the conditions upon which such companies may write insurance in the state of Oregon.

That section provides that it shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place, or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent, or agents, of such insurance company residing and doing business in this state.

Subdivision 2 of said section requires every fire insurance company before issuing any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, to file with the insurance commissioner of this state the title under which it proposes to write any such insurance in the state of Oregon, and that such title shall be registered by the insurance commissioner, together with the name of the insurance company filing such title, and a specimen thereof shall be pasted in a book to be kept for that purpose by the insurance commissioner, and that upon paying the fee as thereinafter provided and complying with all other departmental requirements, such insurance company shall be entitled to issue policies or contracts for indemnity or insurance for the one title so registered, and no more.

Subdivision 3 requires every insurance company registering a title under said act to pay to the insurance commissioner a fee of $5 therefore and that the insurance com- [fol. 23] missioner shall then issue a certificate to the insurance company registering such title.

Subdivision 4 provides that every insurance company licensed to transact fire insurance business in this state may establish agencies to consist of but one agent for every city, town or village in the state to represent the title registered and additional agencies as thereinafter provided in said section, and that the name of every agent appointed

in accordance with the provisions of said section shall be filed with the insurance commissioner immediately upon the making of such appointment. It is further provided that the insurance commissioner shall thereupon issue to each such agent who is qualified, a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March 31, after the date of such appointment; that a fee of $2.00 shall be paid to the insurance commissioner for issuing such certificate.

Subdivision 5 provides that any insurance company authorized to transact fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of a corporate title and may issue its policies under such additional title and appoint agencies to transact its business under such additional title.

Subdivision 6 provides that any such insurance company which is authorized to transact fire insurance in this state in its corporate title, and also under an additional title, may only appoint one agent to represent each such title filed in any city, town or village of this state.

Subdivision 7 provides that such company may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants, according to the last federal census, provided any such insurance company doing business under an additional title shall be limited to one agency for each title.

Subdivision 8 provides thus:

"Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of [fol. 24] an annual license fee of five hundred dollars for each such agent."

The Northwest National Fire Insurance Company notified the appellant that it had appointed the respondent to act as its agent in the city of Portland, Oregon, but did not pay the annual license fee of $500 required by the subdivision to be paid upon application of such agent.

It is the contention of the respondent in this case that his application for a license as insurance agent was made pursuant to section 6333 Or. L. and that since no objection was raised as to his personal qualifications, it became the duty of the insurance commissioner to issue such license to him upon the payment of a fee of $2.00 therefor which was tendered by the respondent with his application.

The commissioner's refusal to make the requested appointment was occasioned by the nonpayment of the fee of $500 required by Section 6388 Or. L. as a condition precedent to the right of any fire insurance company to appoint such additional agent. The contention of respondent is, that the license should issue upon compliance with the conditions prescribed by section 6333 Or. L. without the foreign insurance company complying with section 6388 Or. L. subdivision 8, by paying the fee of $500 thereby required.

Chapter 203, General Laws of Oregon 1917, which is practically a fire insurance code, is a general act "for the regulation and supervision of insurance in the state of Oregon." This act contains subdivision 8, section 6388 Or. L. and also subdivision 3, section 6333 Or. L.

There is no reason suggested or conceived why a foreign insurance company applying to do business in this state should not comply with both of the sections and subdivisions mentioned. Therefore, a foreign corporation being required to comply with the statute, in order to be entitled to appoint agents and consummate its business in the state of Oregon, it follows, as the night follows the day, that in order for an agent to obtain a license to represent such a foreign corporation there must first be a compliance by the foreign corporation with the requirements of our state law.

The power of the state to impose conditions upon which [fol. 25] a foreign fire insurance company may be permitted to do business in this state is not subject to constitutional limitations, and the rights of one applying for a license to act as agent for such insurance company are contingent upon the compliance of the company with conditions precedent to its right to appoint such an agent. Section 6388 Or. L., Sec. 22c Ch. 203, Gen. L. of Or. 1917; Paul v. Virginia, 8 Wall. 168, 19 L. ed. 357; Fire Ass'n. of Phila. v. N. Y. 119 US 110, 30 L. ed. 342; Hooper v. State of Cal. 155

U. S. 648, 39 L. ed. 297; Cheney Bros. Co. v. Mass. 246 U. S. 147, 62 L. ed. 632; Am. Smelting etc. Co. v. Colorado, 204 U. S. 103, 9 Ann. Cas. 978, and cases in note thereto.

While the general power of a state to exclude, restrict or regulate foreign corporations seeking to do business within its borders, is undoubted, the exercise of such power by particular statutes is subject to all applicatory constitutional provisions contained in either the state or the federal constitution. With the question of the expediency or policy of the statutes imposing conditions upon foreign corporations, the courts have nothing to do. It is purely a legislative question. The statute must stand, unless it is plainly in conflict with some constitutional provision; and, if there is doubt as to its constitutionality, the doubt must be resolved in favor of the legislature. 14A C. J. p. 1428 Sec. 3949.

There is no prohibition in the federal constitution which operates to restrain the legislature of a state from exacting from foreign corporations as a condition precedent to their being admitted to do business within the state, license fees or taxes, even where they are not imposed upon similar domestic corporations. 14A C. J. p. 1256 section 3958. There is no discrimination in the statute as compared with domestic corporations.

Having given a foreign corporation a license to do business within the state, the state may revoke it in its discretion for good cause or without any cause at all and its motive in doing so is not open to inquiry, subject of course to the constitutional requirements with respect to the obligation of contracts, vested rights, and due process of law. With like limitations, additional requirements, conditions, and restrictions may be imposed on foreign corporations already licensed to do business within the state. 14A C. J. p. 1247, Sec. 3948.

[fol. 26] In a note to State ex rel. Ackerman, 51 Ohio St. 163, 24 L. R. A. 298, reads thus:

"That insurance is not commerce within the constitutional provisions giving congress authority to regulate commerce and preventing state interference therewith has been fully established by the decisions of the United States Supreme Court, the final authority on the subject, as well as by decisions of the state courts. Paul v. Virginia, 75 U. S.

8 Wall. 168, 19 L. Ed. 357; Ducat v. Chicago, 77 U. S. 8 Wall. 410, 19 L. Ed. 972; Liverpool & L. Life & Fire Ins. Co. v. Oliver, 77 U. S. 10 Wall. 566, 19 L. Ed. 1029; Home Ins. Co. of N. Y. v. Augusta, 93 U. S. 116, 23 L. ed. 825; People v. Thurber, 13 Ill. 554; Farmers & M. Ins. Co. v. Harrah, 47 Ind. 236; List v. Comm. 118 Pa. 322; State v. Phipps, 18 L. R. A. 657, 50 Kan. 609.

Therefore to insurance companies the general doctrine fully applies, that a state may exclude a foreign corporation, or impose upon it, as a condition of doing business, any burdens or restrictions that it chooses, reasonable or unreasonable."

A corporation seeking, by its agents, to establish a domicile for business in a state other than that of its creation, must take that domicile, as individuals are always understood to do, subject to the responsibilities and burdens imposed by the laws which it finds in force there. S. S. White Dental Manuf. Co. v. Commonwealth, 212 Mass. 35, 98 N. E. 1056, Ann. Cas. 1913C, 805, 808. Making the right to act as agent for foreign insurance company subject to the condition of the payment of a fee, or a restriction, tending to limit the number of agents to act for a foreign insurance company in this state, is not an unconstitutional impairment of the privileges and immunities of a citizen, since corporations are not within the protection of the provisions relating thereto, and persons seeking to act for them can acquire no greater rights than the corporations have. The power to exclude embraces the power to regulate, to enact and enforce all legislation in regard to things done within the state which may be directly or incident-ly requisite in order to render the enforcement of the conceded power efficacious to the fullest extent subject always, of course, to the paramount authority of the constitution of the United States. Cook v. Howland, 74 Vt. 393, 59 L. R. A. 338.

The insurance business so directly affects the well-being and interest of the public as to make it a proper subject for regulation and control by the state. The right to regulate [fol 27] and control the business includes the right to regulate and control the agents and brokers through whom such business is carried on. The state has the right to require all persons who engage within its borders in the business of insurance, first to secure a license from designated author-

ity, authorizing the engaging in such business. Wallace v. Ferguson, 70 Or. 306, 312, 140 P. 742, 141 P. 542; La Tourette v. McMaster, 248 U. S. 465; Noble v. English, 183 Iowa 893, 167 N. W. 629. Note to N. W. Nat. Ins. Co. v. Fishback, 130 Wn. 490, 228 P. 516, 36 A. L. R. at pages 1507, 1512, and other cases there cited.

In La Tourette v. McMaster, 248 U. S. 465, a statute was held to be constitutional which provided that only such persons shall be licensed to act as insurance agents or brokers as are residents of the state and have been licensed agents of the state for at least two years. The court said that the business of insurance was clothed with a public interest, and subject therefore to the regulating power of the state, "and it necessarily follows that, as insurance is affected with a public interest, those engaged in it or who bring about its consummation are affected with the same interest and subject to regulation as it is. A broker, so engaged—is an instrument of such consummation. The statute makes him the representative of the insured. He is also the representative of the insurer * * * and his fidelity to both may be the concern of the state to secure."

It must be conceded that a state has the power to prohibit a foreign corporation from doing business in the state of Oregon. This includes the lesser power to regulate and impose a restriction upon such foreign corporation as a condition precedent to its doing business or to enlarge or extend its business in this state.

The attack is made by respondent upon the validity of subdivision 8, section 6388 Or. L. as in violation of section 20, Article I of the Constitution of Oregon, which provides that no law shall be passed granting to any citizen or class of citizens, privileges or immunities which upon the same terms shall not equally belong to all citizens. It is also claimed that the provision is repugnant to the 14th amend- [fol. 28] ment of the constitution of the United States which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or deny to any person within its jurisdiction the equal protection of the laws.

The provisions of the statute do not abridge any right, guaranteed by the state or federal constitutions. Fergu-

son v. Tuttle, 95 N. J. L. 374. The latter case is in principle like the one in hand.

It is also said that the law is discriminatory, oppressive and arbitrary. The qualification prescribed by the statute is neither discriminatory, oppressive or arbitrary between persons. It is a plain, simple prerequisite under which a foreign insurance company can do business in the state of Oregon. The legislature in its wisdom had the power to prescribe the conditions under which agents can do business in the state for foreign insurance companies. All are alike under the law. There is no discrimination.

It may as well be said that the state should permit a foreign corporation to do busines within its borders, without any compliance with the statute in order that citizens of the state might act as agents for such foreign corporations, as it is to say foreign corporations should not comply with subdivision 8, section 6388, in order that a license might be issued to an agent to represent such foreign insurance company. The regulation of the appointment of agents of such corporations is merely incidental to the provisions for the qualifications of foreign insurance companies to do business in this state.

In the case of N. W. Nat. Life Ins. Co. v. Fishback, 130 Wn. 490, 228 P. 516, 36 A. L. R. 1507, the opinion of the majority of the supreme court of Washington was directed solely to the effect of the statute in depriving persons who desire to act as agents from following such occupation. This case was followed in Franklin F. Ins. Co., v. Montoya, (N. M.) 251 P. 390, where it was held that a statute prohibited more than one agent of fire insurance companies in each town violates the due process and special privilege clauses.

There is some reason for the requirement for the re- [fol. 29] striction contained in the statute limiting or tending to limit the number of agents of foreign insurance corporations as a matter of regulation and supervision. While no specific requirements are contained in the law as to such agents keeping a record, it is well known that a record of the issuance of fire insurance policies are kept by such agents. And a less number of agents would doubtless require less effort of supervision and would facilitate the supervision of insurance business to a certain extent, as the commissioner could verify reports made by foreign in-

surance companies for the basis of taxation, by an examination of the books and records of agents.

The main purpose of the provision of the statute appears to be in the nature of a restriction on a foreign insurance corporation. It is purely a legislative question, 14 A. C. J. p. 1248 Sec. 3949.

We hold that the statute involved is a valid legislative requirement of a foreign insurance company in the conduct of its business in the state of Oregon. The judgment of the circuit court is reversed and the proceeding is dismissed.

Rand, C. J., Brown and Belt, JJ., concur.

[fol. 30] IN SUPREME COURT OF OREGON

[Title omitted]

JUDGMENT—July 17, 1928

This cause on June 26, 1928, having been duly tried, argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It is therefore considered, ordered and decreed that the decree of the court below in this cause rendered and entered be and the same is reversed and set aside.

The court having fully considered the allegations of the parties and the entire record herein finds that the plaintiff is without equity in this proceeding and is not entitled to the relief prayed for or any relief.

It is therefore considered, ordered and decreed that the plaintiff take nothing by his complaint and that his suit be and the same is hereby dismissed.

[fol. 31] It is further ordered that appellant recover of and from respondent his costs and disbursements in this court, taxed at $—.

It is further ordered that this cause be remanded to the court below from which the appeal was taken with directions to enter a decree in accordance herewith.

[fol. 32] Certificate to foregoing paper omitted in printing.

[fols. 33-36] Petition for rehearing, covering three pages, filed August 4, 1928, omitted from this print. It was denied without more October 2, 1928.

[fol. 37] IN SUPREME COURT OF OREGON

[Title omitted]

ORDER DENYING REHEARING—Oct. 2, 1928

Now at this time the court being fully advised in the premises it is ordered that the petition for rehearing heretofore submitted be and the same is hereby denied.

[fol. 38] [File endorsement omitted]

IN SUPREME COURT OF OREGON

[Title omitted]

PETITION FOR ORDER OF APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed Oct. 15, 1928

Considering himself aggrieved by the final decision of the Supreme Court of the State of Oregon in the above entitled cause, Karl Herbring, the respondent above named, hereby prays than an order of appeal be entered herein and for an order fixing the amount of the bond thereon.

Assignment of Errors

Comes now the respondent above named, Karl Herbring and as appellant to the Supreme Court of the United States from the judgment and decision heretofore rendered herein, assigns as error:

1. That the Supreme Court of the State of Oregon erred in reversing the judgment of the Circuit Court of Marion County, State of Oregon, and ordering said court to dismiss this proceeding.

2. That the Supreme Court of the State of Oregon erred in holding that Sub-div. 8 of Section 6388 of the Oregon Laws does not abridge the rights of the appellant Karl Herbring, guaranteed by Section 1 of the 14th Amendment to the Constitution of the United States.

[fol. 39] Prayer for Rehearing

For which errors the respondent above named, Karl Herbring, prays that the said judgment of the Supreme Court of the State of Oregon, dated July 19, 1928, in the above entitled cause, be reversed and a judgment ordered in favor of the said appellant, and for costs.

Karl Hebring, pro Se. Guy E. Kelly, Attorneys for Karl Herbring.

Service of copy of foregoing admitted this 15th day of October, 1928.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant, Attorneys for Claire A. Lee, as Insurance Commissioner of the State of Oregon.

[fol. 40] [File endorsement omitted]

IN SUPREME COURT OF OREGON

[Title omitted]

ORDER ALLOWING APPEAL—Filed Oct. 15, 1928

Now on this 15th day of October, 1928, on reading the petition of Karl Herbring, the respondent herein, praying for the issuance of an order herein allowing his appeal to the Supreme Court of the United States from the Supreme Court of the State of Oregon, and it appearing from said petition and the record of the above entitled cause that in the above entitled cause there was drawn in question the validity of a statute of the state of Oregon on the ground of its being repugnant to the Constitution of the United States and that the decision was in favor of its validity and that such petition is a proper petition for the issuance of the said order

Now, therefore, it is ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Oregon, that said appeal be and the same is hereby allowed, and

It is further ordered that the appellant Karl Herbring execute to the appellee Claire A. Lee as Insurance Commissioner of the State of Oregon, his bond with surety to be

approved by the undersigned in the sum of $500.00 conditioned according to law, and that thereupon all further proceeding upon said judgment rendered by this court in said action shall be stayed pending the order and decision of the Supreme Court of the United States upon said appeal.

It is further ordered that the clerk of this court, within sixty days from this date make and transmit to the clerk of the Supreme Court of the United States, under his hand and the seal of this court, a transcript of the record herein containing a true copy of all material parts of the record herein, which shall be designated by præcipe filed with him by either of the parties hereto.

[fol. 41] Done this 15 day of October, 1928.

John L. Rand, Chief Justice of the Supreme Court of the State of Oregon.

Attest: Arthur S. Benson, Clerk of the Supreme Court of the State of Oregon. (Seal.)

Endorsed

STATE OF OREGON,
County of Marion, ss:

Service of copy of Order Allowing Appeal acknowledged this 15th day of October, 1928.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant, Attorneys for Clare A. Lee.

[fols. 42 & 43] Bond on appeal for $500, approved and filed October 15, 1928, omitted in printing.

[fol. 44] Citation, in usual form, showing service on I. H. Van Winkle, omitted in printing.

[fol. 45] IN SUPREME COURT OF OREGON

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Oct. 15, 1928

To the Honorable Arthur S. Benson, Clerk of the Supreme Court of the State of Oregon:

Please make and transmit to the Supreme Court of the United States, under your hand and the seal of the Supreme

Court of the State of Oregon, a true copy of the following papers on file with you in the above entitled case:

1. The notice of appeal of Karl Herbring from the decision of Claire A. Lee as Insurance Commissioner of the State of Oregon, filed with the Clerk of the Circuit Court of Marion County.
2. Bond on appeal filed therewith.
3. Proof of service thereof.
4. Stipulation of facts dated December 12, 1927.
5. Order of the Circuit Court of Marion County dated February 24, 1928.
6. Decision of the Supreme Court of the State of Oregon filed July 17, 1928.
7. Petition of Karl Herbring for re-hearing.
8. Order denying petition for re-hearing.
9. Karl Herbring's petition for order of appeal.
10. Citation to Claire A. Lee.
11. Order of appeal.
12. Assignment of errors.
13. Bond on appeal.

Karl Herbring, Pro Se. Guy E. Kelly, Attorneys for Appellant, Karl Herbring.

[File endorsement omitted.]

[fol. 46] Service of copy of Præcipe acknowledged this 15th day of October, 1928.

I. H. Van Winkle, Attorney General of Oregon; Willis S. Moore, Assistant, Attorneys for Claire A Lee.

[fol. 47] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 48] In Supreme Court of United States

Statement of Points to be Relied Upon and Designation of the Parts of the Records to be Printed—Filed Dec. 17, 1928

Comes now the Appellant and adopts his assignments of error as his stat-ment of the points to be relied upon and

represents that the whole of the record, as filed, is necessary for the consideration of the case.

Guy E. Kelly, Attorney for Appellant.

[fols. 49 & 50] IN THE SUPREME COURT OF THE UNITED STATES

Affidavit of Service

Maxine Hunt, being first duly sworn upon oath deposes and says that she is a stenographer in the employee of Mr. Gut E. Kelly attorney for appellant above named; that on the 10 day of December 1928 she served the attached statement of points to be relied upon and designation of the parts of the record to be printed on attorneys for the respondent, I. H. Van Winkle Attorney General, of the State of Oregon, and Willis S. Moore, Assistant Attorney General of the State of Oregon by depositing in the United States Post Office at Tacoma, Washington, a full, true and correct copy thereof addressed to the said I. H. Van Winkle and Willis S. Moore at Salem Oregon and prepaying the postage thereon.

Maxine Hunt.

Subscribed and sworn to before me this 10th day of December, 1928. Thomas MacMahon, Notary Public, Residing at Tacoma, Washington.

Endorsed on cover: File No. 33,899. Oregon Supreme Court. Term No. 590. Karl Herbring, appellant, vs. Claire A. Lee, as Insurance Commissioner of the State of Oregon. Filed December 17th, 1928. File No. 33,899.

FILE COPY

JAN 28 1929

Supreme Court of the United States

OCTOBER TERM, 1928

NO. ~~700~~ 17

KARL HERBRING,
Appellant,

vs.

CLARE A. LEE,
Appellee.

Appellee's Statement Against the Jurisdiction Asserted by Appellant

I. H. VAN WINKLE,
Attorney General of the
State of Oregon,
WILLIS S. MOORE,
Assistant Attorney General of
the State of Oregon,
Attorneys for Appellee.

GUY E. KELLY,
Attorney for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1928

NO. 590

KARL HERBRING,
Appellant,
vs.
CLARE A. LEE,
Appellee.

Appellee's Statement Against the Jurisdiction Asserted by Appellant

As stated at the bottom of page 4 of Appellant's Statement Supporting Jurisdiction:

> The appellee takes the position that the law in question is a condition precedent to the right of a foreign insurance company to do business in Oregon and that therefore the constitution has no application. In this position he was sustained by the supreme court of Oregon.

The stipulated facts upon which the case was submitted to the circuit court for Marion county, Oregon, and from whose decision appeal was taken to the supreme court of the state of Oregon, appear

in the printed record, a copy of which has not been received by appellee. The opinion of the lower court will be found reported in 269 Pac. 236, 240.

Application for the appointment of appellant as an additional insurance agent of the Northwestern National Insurance Company of Milwaukee, Wisconsin, for the city of Portland, Oregon, was required by the defendant insurance commissioner of Oregon to be made by the company for which he was to act. Such applications are governed by the provisions of section 6388, Oregon Laws, which is section 22 of chapter 203, General Laws of Oregon, 1917. The parts thereof material to this case read as follows:

> (1) Foreign Fire Insurance Companies Not to Write Insurance Except Through Licensed Agent. It shall be unlawful for any fire insurance company doing business in the state of Oregon to write, place or cause to be written or placed, any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, except through or by the duly authorized agent or agents of such insurance company residing and doing business in this state, to whom the premium on such insurance shall be paid; provided, that this section shall not apply to direct insurance covering the rolling stock and other property belonging to and used in the operation and maintenance of plant and business of railroad corpora-

tions or other common carriers or property in transit while in the possession and custody of railroad corporations or other common carriers and mutual fire insurance companies. At the time of the filing of the annual statement of every such company with the insurance commissioner there shall be attached thereto the affidavit of the president, manager, or chief executive officer in the United States that this section has not been violated. This section shall not apply to policies issued directly from the home office of any company organized under the laws of this state or having its home office located in this state.

(2) "Title" Under Which Fire Insurance Is To Be Written Must Be Registered. Every fire insurance company shall, before issuing any policy or contract for indemnity or insurance on property situated or located in the state of Oregon, file with the insurance commissioner of this state the "title" under which it proposes to write any such insurance in the state of Oregon, and such title shall be registered by the said insurance commissioner, together with the name of the insurance company filing such title, and a sample and specimen thereof shall be pasted in a book to be kept for that purpose by the insurance commissioner; and upon paying the fee as hereinafter provided and complying with all other departmental requirements, such insurance company shall be entitled to issue policies or contracts for indemnity or insurance for the one title so registered, and no more.

(3) Filing Fee; Certificate. Every insurance company registering a title under this act shall pay to the insurance commissioner a fee of $5 and

the insurance commissioner shall then issue a certificate to the insurance company registering such title, setting forth the name of the company, and attaching to the certificate a facsimile of the title registered and filed as hereinbefore provided.

(4) License of Fire Insurance Agent; Certificate; License Fee. Every insurance company licensed to transact fire insurance business in this state and lawfully doing such business therein, may, in respect thereof, establish agencies in this state, to consist of but one agent for each city, town or village in the state to represent the title registered, and additional agencies as hereinafter provided, and the name of every agent appointed, in accordance with the provisions of this section shall be filed with the insurance commissioner immediately upon the making of such appointment by any such company. The insurance commissioner shall thereupon issue to each such agent that (who) is qualified as provided in this act a certificate setting forth that such agent is entitled to act for the company appointing him for the balance of the current year ending March thirty-first following the date of such appointment. Every such agent now representing any such company, or who may hereafter be appointed to represent any such company, provided such agent is qualified as provided in this act, shall be relicensed during the month of March in each year for the ensuing year upon proper application to the insurance commissioner by the company appointing him. The fee fixed for issuing such certificate shall be $2 and shall be paid to the insurance commissioner; provided, that the certificate issued to an established agency of any company in any city, town or

village in the state may be transferred to any agent or agency by the insurance commissioner upon proper application of any such company without exacting further fees.

(5) Additional Title. (a) Any insurance company authorized to transact a fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of corporate title by such companies in this act and may issue its policies under such additional title.

(b) Fees. Any such company qualifying to transact business under an additional title shall be subject to the payment of the same fees for the transaction of business under such additional title as are required of such company in the transaction of business under its corporate name, and may appoint agents to transact its business under such additional title in the same manner as provided for companies.

(c) Report. Any company transacting business under an additional title shall report to the insurance commissioner the amount of such business transacted under the additional title, for taxation and departmental purposes, in the same manner and form as such company is required to report the business transacted under its corporate name.

(6) Appointment of Additional Agent. Any such insurance company which is authorized to transact fire insurance in this state in its corporate title and also under an additional title may only appoint one agent to represent each such title filed in any city, town or village of this state.

(7) Additional Agent in Certain Cities. Any such insurance company which has qualified to transact a fire insurance business in this state and is lawfully doing such business therein may appoint one additional agent to represent such company transacting business in its own corporate name in any city of this state having a population of 50,000 or more inhabitants according to the last federal census; provided, that any such insurance company doing business under an additional title shall be limited to one agency for each title.

(8) Annual License Fee for Additional Agent. Any such insurance company may appoint an additional agent or agents to transact business in its own corporate name, or additional title, in any city of this state on application to the insurance commissioner and the payment of an annual license fee of $500 for each such agent.

It is contended by appellee that the rights of the appellant in the premises are contingent upon the power of said insurance company to appoint a third agent in the city of Portland, Oregon, and that such appointment cannot be made until it has paid the additional fee of $500 required by subsection 8 of section 6388, Oregon Laws, to be paid by such companies as a condition precedent to their right to appoint such third agents.

The case was decided by the lower court (R....) upon the ground that the provisions of the statute

do not abridge any right guaranteed by the state or federal constitutions (269 Pac. 239).

It is submitted that this court has no jurisdiction of the within cause, and that the same should be dismissed.

Paul v. Virginia, 8 Wall. 168, 19 L. Ed. 357.

Fire Association of Philadelphia v. New York, 119 U. S. 110, 30 L. Ed. 342.

Hooper v. State of California, 155 U. S. 648, 39 L. Ed. 297.

Cheney Brothers Co. v. Massachusetts, 246 U. S. 147, 62 L. Ed. 632.

Hanover Fire Insurance Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372.

I. H. VAN WINKLE,
Attorney General of Oregon,

WILLIS S. MOORE,
Assistant Attorney General
of Oregon,

Counsel for Appellee.